Greenfire Law

JAMES BIRKELUND, ESQ.
548 Market St., Suite 11200
San Francisco, CA 94104
T: 415.602.6223; F: 415.789.4556
jbirkelund@greenfirelaw.com

By Certified Mail
Return Receipt Requested

May 1, 2014

Corporation Service Company
Agent for Service of Process for
Pentair Thermal Management, LLC
2711 Centerville Rd., Ste. 400
Wilmington, DE 19808

Kevin Friel
Director of Operations
Pentair Thermal Management, LLC
2501 Bay Road
Redwood City, CA 94063

USA Regional Headquarters
Pentair Thermal Management, LLC
Attn. Legal Department
7433 Harwin Dr.
Houston, TX 77036

Re: Notice of Intent to File Citizen Suit Pursuant to the Federal Clean Water Act

To Whom It May Concern:

On behalf of the Plastic Pollution Coalition, a program of the Earth Island Institute (collectively, "PPC"), whose address is 2150 Allston Way #460, Berkeley, California 94704, and telephone number is (510) 859-9100, I write regarding violations under the federal Clean Water Act ("CWA") by Pentair Thermal Management, LLC ("Pentair"), with regard to its facilities located at: 2555 Bay Road, 2501 Bay Road, 2415 Bay Road, 947 Douglas Ave, and 899 Broadway, all adjacent buildings on an approximately five-acre site in Redwood City, 94063 (collectively, the "Facility"). The purpose of this letter is to provide Pentair with notice of these violations and notice of our intent to file a lawsuit against the corporation in sixty (60) days under the CWA in Federal District Court. 33 U.S.C. § 1365(a)(1).

The Clean Water Act prohibits the discharge of storm water from industrial activities except as allowed pursuant to a permit. *See* 33 U.S.C. § 1311(a), 1342; 40 C.F.R. § 126(c)(1). PPC intends to file suit for Pentair's ongoing failure to comply with the procedural and substantive conditions of the State of California's National Pollutant Discharge Elimination System General Permit No. CAS000001, California Regional Water Quality Control Board, Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities ("NPDES Permit" or "Stormwater Permit").

As detailed below, information available to PPC indicates that Pentair has failed to comply with many of the basic reporting, filing, and monitoring requirements of the Storm Water

Permit and has discharged, and continues to discharge, pollutants unlawfully from the Facility. In addition to the violations explicitly noted herein, this notice letter ("Notice") covers all CWA violations of the same type evidenced by information that becomes available after the date of this Notice.

According to the California Secretary of State, the registered agent for service of process for Pentair Corporation is Corporation Service Company. The Facility previously operated and reported to the Water Board under the name of Tyco Thermal Controls. All references in this letter to Pentair also refer to Tyco Thermal Controls to the extent the latter was operating the Facility. Based on our information, in 2012, a merger between Pentair's parent company, Pentair Inc., and Tyco International Ltd. created a new entity, Pentair Ltd. The Facility in Redwood City appears to be associated with Pentair Ltd. (collectively with Pentair, Tyco Thermal Controls, and Tyco International Ltd. are referred to as the "Pentair Entities"). This letter puts all Pentair Entities on notice of violations and is being sent to you as the responsible owners, officers, and/or operators of the Pentair Entities, or as the registered agent for these individuals and entities.

I. Background on Pentair Thermal Management

Based on our investigation, the Pentair has been operating the Facility since at least 2002. The company certifies in its Notice of Intent filed in 2013 that it is classified under SIC codes 3357 (drawing and insulating nonferrous wire) and 3087 (miscellaneous plastics). In 2002, the company's NOI to comply with the Storm Water Permit noted that Pentair was classified under SIC code 3089 (plastic products). Pentair engages at the Facility in industrial manufacturing processes to produce heat tracing and leak detection products for infrastructure industries. Pentair handles a wide array of industrial materials and wastes, including plastic pellets, plastic color concentrates for film and injection molding applications, plastic compounds, carbon paper, and powder coating application, modified copolymers of ethylene and tetrafluoroethylene, antimony, copper, zinc, aluminum, iron, and other chemicals. Sources of pollutants associated with the industrial activities at the Facility are not adequately described in the facilities reporting materials but appear to include industrial processes related to plastic nurdles and the receiving, shipping, and storage of hazardous materials. The total area of the Facility is encompasses approximately 5 contiguous acres and it has at least 10 storm drains and one valley gutter. The Facility collects and discharges storm water from its operations into channels that ultimately flow into the San Francisco Bay.

Despite the company's long-term history of handling of hazardous wastes and the importance of Pentair taking environmental stewardship seriously, records evidence a repeated, ongoing disregard for the reporting requirements of the CWA and its NPDES Permit.

II. Legal Framework

The objective of the Clean Water Act is to restore and maintain the "chemical, physical and biological integrity of [the] Nation's waters." 33 U.S.C. § 1251(a). In accordance with that objective, § 301(a) of the Clean Water Act makes unlawful "the discharge of any pollutant by any person," unless in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES"). 33 U.S.C. §§ 1311(a), 1342; *Envtl. Prot. Agency v. California*

ex rel. State Water Resources Control Board, 426 U.S. 200, 205 (1976). "An NPDES permit serves to transform generally applicable effluent limits and other standards . . . into the obligations . . . of the individual discharger." *State Water Resources Control Board*, 426 U.S. at 205. Noncompliance with a permit constitutes a violation of the Clean Water Act. 40 C.F.R. § 122.41.

A. Stormwater Permit

Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), establishes a framework for regulating pollutants associated with industrial activity. In California, any person who discharges storm water associated with industrial activity must comply with the terms of California's general permit covering such discharges (the Stormwater Permit).[1] 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.41(a); Stormwater Permit, § C(1). "Any [Stormwater] Permit noncompliance constitutes a violation of the [CWA] and the [California] Porter-Cologne Water Quality Control Act." Stormwater Permit, § C(1). Broadly, the Stormwater Permit prohibits discharges of materials other than storm water directly or indirectly to waters of the United States and storm water discharges which "cause or threaten to cause pollution, contamination, or nuisance." *Id.*, § A. The Stormwater Permit imposes a duty to "take all responsible steps to minimize or prevent any discharge in violation of [the Stormwater] Permit which has a reasonable likelihood of adversely affecting human health or the environment." *Id.*, § C(4).

The Stormwater Permit implements the requirements of the CWA through both technology-based provisions and water quality-based standards. The Stormwater Permit sets out four basic requirements for permittees: (1) effluent limitations, (2) receiving water limitations, (3) the implementation of a Storm Water Pollution Prevent Plan ("SWPPP"), and (4) the development of a Monitoring and Reporting Program ("MRP").

B. Effluent Limitations

First, the Stormwater Permit sets effluent limitations. There are three basic effluent limitations. Where the EPA has set effluent limitation guidelines for an industry, storm water discharges may not exceed the specific guidelines. Stormwater Permit, Effluent Limitation B(1). Additionally, storm water discharges shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 C.F.R. Part 117 and/or 40 C.F.R. Part 302. Stormwater Permit, Effluent Limitation B(2). Finally, the Stormwater Permit includes a technology-based requirement. It requires that facility operators "reduce or prevent pollutants associated with industrial activity" through (1) the implementation of the best available technology economically achievable ("BAT") for toxic and non-conventional pollutants and (2) the best conventional pollutant control technology ("BCT") for conventional pollutants.[2]

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[2] Conventional pollutants are those typical of municipal sewage, and for which municipal secondary treatment plants are typically designed as biological oxygen demand (BOD), total suspended solids (TSS), fecal coliform bacteria, oil and grease, and pH. 40 C.F.R. § 401.16. Nonconventional pollutants are all pollutants that are not included in the list of conventional or toxic pollutants in 40 C.F.R. Part 401; this includes pollutants such as chemical oxygen demand (COD), total organic carbon (TOC), nitrogen, and phosphorus. Toxic pollutants are those for which municipal secondary treatment plants are typically designed as biological oxygen demand (BOD), total suspended solids (TSS), fecal coliform bacteria, oil

[3] BMPs are designed to prevent the discharge of pollutants in storm water.

Stormwater Permit, Effluent Limitation B(3). A facility operator can comply with this requirement by developing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") that (1) complies with the requirements in Section A of the Stormwater Permit and (2) includes best management practices ("BMPs") that achieve BAT/BCT.[3] *Id.*
The Environmental Protection Agency ("EPA") has established benchmarks for pollutant discharges, which serve as the parameters to determine if a facility is properly implementing safeguards and procedures to prevent unlawful discharges. 65 Fed. Reg. 64746, Table 3. These benchmarks are relevant and an objective standard to evaluate whether a facility has implemented the requisite BAT and BCT. *See* Table 1.

***Table 1:* Relevant EPA Benchmarks**

Pollutant	EPA Benchmark
Total Suspended Solids ("TSS")	100 mg/L
Oil and Grease	15 mg/L
pH	6.0 – 9.0 s.u.
Aluminum	0.75 mg/L
Iron	1 mg/L
Copper	0.0636 mg/L
Zinc	0.117 mg/L

C. Receiving Water Limitations

Second, the Stormwater Permit prohibits the discharge of water that causes or contributes to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan, here the San Francisco Bay Water Quality Control Plan ("Basin Plan"). Stormwater Permit, Receiving Water Limitation C(2); *Baykeeper v. Kramer Metals, Inc.*, 619 F. Supp. 2d 914, 920 (C.D. Cal. 2009). The Basin Plan contains "discharge prohibitions applicable throughout the region." Basin Plan, 4-7 and Table 4-1; *see* Table 2, below.

***Table 2:* Basin Plan Discharge Prohibitions**

No.	It shall be prohibited to discharge:
6	All conservative toxic and deleterious substances, above those levels which can be achieved by a program acceptable to the Regional Board, to waters of the Basin
7	Rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas.

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and grease, and pH. 40 C.F.R. § 401.16. Nonconventional pollutants are all pollutants that are not included in the list of conventional or toxic pollutants in 40 C.F.R. Part 401; this includes pollutants such as chemical oxygen demand (COD), total organic carbon (TOC), nitrogen, and phosphorus.

[3] BMPs are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2. BMPs can be structural or non-structural.

The federal EPA also promulgated numeric water quality criteria for priority toxic pollutants and other water quality standards provisions to be applied to waters in the State of California (the "California Toxics Rule ("CRT")). 40 CFR §131.38. The EPA promulgated this rule based on the determination that the numeric criteria are necessary in the State of California to protect human health and the environment. Numeric standards for freshwater discharges include: zinc at 0.120 mg/L (maximum concentration) and 0.120 mg/L (continuous concentration). *Id*; see Table 3 below.

Table 3: **Relevant Receiving Water Limits—California Toxics Rule**

Pollutant	**EPA Benchmark**
Copper (continuous concentration)	0.009 mg/L
Copper (maximum concentration)	0.013 mg/L
Lead (continuous concentration)	0.0025 mg/L
Lead (maximum concentration)	0.065 mg/L
Zinc (continuous concentration)	0.120 mg/L
Zinc (maximum concentration)	0.120 mg/L

The Bay Area Regional Water Quality Control Board ("Regional Board") has found previously that discharge of preproduction plastic is a violation of Discharge Prohibition 6 because "plastic pellets are deleterious in that fish, birds and other marine animals eat the pellets but are unable to digest them, thus starving to death. . . . The plastic pellets will take decades or centuries to fully degrade and may concentrate and transport other, persistent, organic pollutants that may have toxic effects on plants, fish and wildlife." Cleanup and Abatement Order R2-2011-033. The Regional Board found that the same discharges of preproduction plastic are also in violation of Discharge Prohibition 7 because "plastic pellets are a solid waste in that they are associated with human habitation from manufacturing operations in accordance with California Water Code section 13050(d)." *Id*

A facility operator must comply with limitation C(3) by implementing BMPs that achieve BAT/BCT and submitting reports that describe the current BMPs *and revisions* to those BMPs and the SWPPP upon identification of a problem. Stormwater Permit, Receiving Water Limitation C(3)-(4).

D. Stormwater Pollution Prevention Plan

Third, the Stormwater Permit requires that permittees develop and implement a SWPPP that meets certain requirements. Stormwater Permit, § A. The SWPPP has two major objectives: (1) to identify and evaluate sources of pollutants and (2) to identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Stormwater Permit, Section A(2). Section A of the Stormwater Permit catalogues with significant detail what an SWPPP must contain to comply with the General Permit. A SWPPP must contain a compliance activity schedule, a description of industrial activities and pollutant sources, a description of BMPs, drawings, maps (including a site map), and relevant copies or references of parts of other plans. *Id.* A permittee must evaluate and

update the SWPPP with additional BMPs necessary to achieve compliance with the General Permit. *See* Stormwater. Permit, Receiving Water Limitation C(3)-(4), §§ A(2) & A(9).

E. Monitoring and Reporting Program

Fourth, the Stormwater Permit requires a permittee to develop a Monitoring and Reporting Program ("MRP"). Stormwater Permit, Section B. As part of the MRP, a permittee must conduct visual observations of storm water throughout the Wet Season; must collect water samples at each outfall during specific times; must analyze these samples for specific contaminants; and must file Annual Reports with the Regional Board summarizing the visual observations, results of sampling analysis, and Stormwater Permit compliance. Stormwater Permit, §§ B(3)-(5), B(14). The monitoring and reporting program should inform changes in management. Response must be taken "to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of [the Stormwater] Permit." *Id.*, § B(3)(d).

III. Pentair's Violations of the Clean Water Act and Storm Water Permit

Our investigation, including a review of Pentair's annual reports submitted to the State Water Resources Control Board and/or the Regional Water Board, indicates that Pentair routinely discharges water that violates effluent limitations, potentially pollutes a receiving water, and threatens to, and likely causes, contamination and adverse impacts to the environment in violation of the Basin Plan.

A. Violations of Effluent Limitations

Samples of storm water discharged from Pentair demonstrate exceedances of the Basin Plan's water quality standards limits and the EPA's benchmarks *over 45 times* in the last 5 years. *See* Exhibit A (listing numerous discharges). Storm water discharges from the Facility in violation of the NPDES Permit include:

- Zinc discharged at 141 times the EPA's benchmark;
- Iron discharged at 16 times the EPA's benchmark; and
- Aluminum, copper, and lead discharged at 10 times EPA's benchmarks.

Id. In short, pollutants have been discharged by the Facility, on an ongoing basis, into stormwater over the past 5 years. Not only are these sample results indicative of violations of effluent limitations, they indicate discharges of pollutants and materials other than storm water in violation of the NPDES Permit. These pollutants are known to degrade water quality and have adverse effects on aquatic life and habitats in the San Francisco Bay. To date, Pentair has not revised its SWPPP to address these routine violations of the Storm Water Permit.

Our investigations further show that stormwater discharge samples collected and analyzed by Pentair not only had abnormally high levels of toxic metals but also total suspended solids ("TSS") in excess of the EPA Benchmark of 100 mg/L for TSS, total organic carbons ("TOC") in excess of the EPA benchmark of 110 mg/L for TOC, and specific conductance in

excess of the Water Board's proposed EPA benchmark value of 200 µmhos/cm. On April 11, 2011, an analysis of samples from the only storm drain sampled resulted in TSS values of 590 mg/L and again, on October 13, 2009, an analysis of samples from the only storm drain sampled resulted in TSS values of 214 mg/L. *See* Pentair's Annual Storm Water Discharge Report 2010-2011 ("2000-2011 Annual Report"), Pentair's Annual Storm Water Discharge Report 2009-2010 ("2009-2010 Annual Report"). On May 19, 2010, an analysis from the only storm drain sampled show TOC values of 117 mg/L, and again, on April 7, 2009, with TOC values of 119 mg/L. *See* 2009-2010 Annual Report; 2008-2009 Annual Report. On May 19, 2010, an analysis from the same storm drain showed specific conductance values of 926 µmhos/cm, and again, on April 7, 2009, with specific conductance values of 284µmhos/cm. *See* 2009-2010 Annual Report; 2008-2009 Annual Report. These sampling and data results suggest discharges of specific pollutants and materials other than storm water.

To date, Pentair has not revised its SWPPP to address these routine violations of the Storm Water Permit. The failure to do so violates Limitation C(3) of the Permit, and these violations have continued since the first exceedances of the EPA Benchmarks on or before April 7, 2009.

B. Violations of Receiving Water Limitations

Further, the Basin Plan includes effluent limitations limiting pH values for effluent to between 6.5 and 9,[4] and the EPA provides water benchmarks for pH values between 6.0 and 9.0. 65 Fed. Reg. 64767. Discharges with acidic pH values indicate the likely presence of other pollutants that may cause or threaten to cause pollution, contamination, or nuisance. Pollutants that negatively affect pH values are known to have adverse effects on aquatic life and habitats in the San Francisco Bay Waters. Our investigations show Pentair has discharged effluent into stormwater with pH exceeding effluent limitations on multiple occasions, including with pH values as low as 5.62 s.u. *See* Exhibit A.

Each instance of a discharge of storm water in violation of discharge prohibitions, and/or effluent limitations is a separate and distinct violation off the Stormwater Permit and the CWA. *See* 33 U.S.C. § 1311(a). Pentair and its agents are liable under the CWA for these violations that are ongoing and will likely continue.

[4] *See* Basin Plan, Table 4-2. In addition, Pentair uses annual report forms provided by the California Regional Water Quality Control Board ("Water Board") that inform facilities of the acceptable range of pH values between 6.5-8.5. Any measures below 6.5 are unacceptably acidic: "The neutral, or acceptable, [pH] range is within 6.5 to 8.5. At values less than 6.5, the water is considered acidic; above 8.5 it is considered alkaline or basic." Form of Annual Report, State Water Board, Description of Basic Analytical Parameters (emphasis added).

C. Other Stormwater Permit and CWA Violations

A. Failure to Adequately Sample and Analyze Storm Events from Each Discharge Point

With certain limited exceptions, the Stormwater Permit requires that each covered facility sample two storm events per wet season from *each* of its stormwater discharge locations. NPDES Permit, Sections B(5)(a) and B(7)(a). Pentair and its facility operators have demonstrated a consistent practice of failing to comply with these requirements.

Based on our review of publicly available information, Pentair has failed to collect at least two storm water samples from *all* discharge points during each of the past five years. NPDES Permit, Section B(7)(a). According to Pentair's SWPPP, the Facility has 11 drainage points, including 10 storm drains and one valley gutter. Storm Water Pollution Prevention Plan, Pentair Corporation, dated November 25, 2013 ("2013 SWPPP"), Figure 1. Pentair, however, has consistently failed to sample and analyze from each of these discharge points. *See* 2009-2010 Annual Report, 2010-2011 Annual Report, 2011-2012 Annual Report, 2012-2013 Annual Report (all samples taken and analyzed in last 5 years come from only one drainage location). Although under some circumstances facilities may reduce sample collections based on a determination that two or more drainage areas are substantial identical, this determination must be supported and documented. NPDES Permit, Section B(7)(c). Pentair has provided insufficient support or documentation in its SWPPPs and annual reports to allow a reduction in water samplings. *See, e.g.,* 2009-1010 Annual Report, E.4 and E.5 (assertion that stormwater samples and analysis were not reduced and yet only one drainage location was analyzed); 2010-2011 Annual Report, E.4 and E.5 (reduction in sample location based on erroneous assertion that industrial activities do not occur at the site other than in the vicinity of one drainage location); 2011-2012 Annual Report, E.4 and E.5 (no explanation for limiting sample locations); 2012-2013 Annual Report, Section E.5 (blanket assertion that samples have been minimized is not supported by SWPPP). As discussed in detail below, Pentair's BMPs are inadequate and it is likely that discharges in numerous locations throughout the Facility contain unacceptably high levels of toxics and pollutants. Failure to sample storm water from each of the Facility's discharge points each year, and in each instance, constitutes additional and separate violations under the CWA.

Compounding its violations, in the wet season for 2009-2010, based on records obtained from the Water Board, Pentair submitted false reports. Pentair did not provide lab results for samples it collected on October 13, 2009 and March 19, 2010. *See* 2009-2010 Annual Report; NPDES Permit, Sections B.3.b and B.4.a. The lab results from March 19, 2010 appear to be falsely submitted and are in fact lab results from March 1, 2009. That year, Pentair also failed to make quarterly observations and monthly wet season observations as required under the Storm Water Permit. *Id.* The CWA specifically requires that facility operators submit quarterly observations and monthly wet season observations, along with adequate documentation for sampling from two storm events of the wet season. NPDES Permit, Sections B.3.b, B.4.a, B(5). Pentair's failure to submit the required analysis in 2009-2010 shows a further disregard for the Storm Water Permit requirements and constitutes additional violations under the CWA.

B. Failure to Analyze for All Likely Pollutants in Stormwater

The Storm Water Permit requires facilities to analyze samples for all toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. NPDES Permit, Section B(5)(c)(ii). Based on the EPA's Enforcement and Compliance History Online, Detailed Facility Report ("ECHO Report") for Pentair (last accessed on March 19, 2014), the Facility handles and releases significant amounts of antimony compounds. On information and belief, it is likely that antimony is being discharged into the Facility's stormwater and not appropriately analyzed and reported. All facilities covered by the Stormwater Permit must analyze samples for "all toxic chemicals and other pollutants that are likely to be present." NPDES Permit, B.5.c. Pentair has submitted no analysis for antimony. In addition, Pentair admits to using and/or handling a wide array of materials at the Facility, *see* 2013 SWPPP, p. 10-11, which are not described or analyzed in sufficient detail to determine the likely pollutants from industrial activities that may be discharged from the site in stormwater. *See* 2013 SWPPP, p. 9.

Any failure to analyze all likely pollutants is ongoing, and every day Pentair fails to adequately examine all significant pollutants discharged into its stormwater is another violation of the CWA and Stormwater Permit.

C. Failure to Develop, Implement, and Revise an Adequate Storm Water Pollution Prevention Plan

All facilities covered under the Stormwater Permit, including Pentair, must develop and implement a SWPPP. NDPES Permit, Section B(3). The SWPPP must identify and evaluate the sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges. The SWPPP also must identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in stormwater and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are ineffective; and the SWPPP must include BMPs that achieve BAT and BCT. *Id.*

The SWPPP has further detailed requirements and must include:

- a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system (and the direction of flow for discharges), structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and an outline of all impervious areas of the facility *(id.,* Section A(4));

- a list of significant materials handled and stored at the site and a description of where that material is being stored, received, shipped, and handled, as well as the quantities and frequency; and a list of all significant raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials *(id.,* Section A(5));

- a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources and a description of locations where soil erosion may occur *(id.,* Section A(6)); and

- an assessment of all industrial activities and potential pollutant sources *(id.,* Section A(7)).

Our investigations of the Facility indicate that Pentair has not developed or implemented a SWPPP that meets the foregoing requirements. For example, Pentair has failed, and continues to fail, to identify all significant materials and to develop and implement adequate BMPs to prevent the exposure and subsequent discharge of pollutants at levels that do not impair the receiving water body of the San Francisco Bay. Visual observations from satellite and overhead imagery indicate the Facility has wastes and industrial activities that are exposed to rainfall and not covered with structural BMPs.

With the exception of zinc, the significant materials list in Pentair's SWPPP fails to identify specific materials (that are likely significant) but instead identifies industrial categories of products (e.g., "Type 750 20%FG V2" and "KEN-REACT-KR-TTS") that are enigmatic and insufficiently informative for the Water Board and public to understand the materials being handled. 2013 SWPPP, pp.10-11. The SWPPP site map also fails to clearly indicate drainage flows, municipal storm drain inlets, and nearby water bodies (such as the San Francisco Bay). These deficiencies render the SWPPP inadequate.

Pentair has not developed or implemented its SWPPP as necessary to ensure compliance with effluent and discharge limitations, in violation of the Stormwater Permit. NPDES Permit, Sections A(9) and A(10). Pentair therefore has been daily and continuously in violation of its SWPPP requirements every day since at least April 7, 2009.

D. Continuing Violations without an Adequate SWPPP

Despite continuing violations of the NPDES Permit, Pentair has not revised its SWPPP as necessary to ensure compliance with effluent and discharge limitations. Every day that the Facility operates without revising and correcting the deficiencies in its SWPPP is a separate and distinct violation of the CWA and NPDES Permit. *See* NPDES Permit, Sections A(9) and A(10). Pentair therefore has been daily and continuously in violation of its SWPPP requirements every day since at least April 7, 2009.

E. Failure to File True, Timely, and Accurate Annual Reports

The CWA and NPDES permit require that covered facilities submit an annual report by July 1st of each year to the Executive Officer for the Regional Water Quality Control Board responsible for the area (the Annual Report). NPDES Permit, Section B(14). Facilities must include in its Annual Report an analysis of stormwater sampling and an evaluation of the storm water controls. *Id.* Finally, the Annual Report must be signed and certified by an appropriate corporate officer. NPDES Permit, Sections B(14), C(9), and (10).

As discussed above, Pentair has not complied with a numerous provisions under the CWA and required by the Stormwater Permit. Nonetheless, Pentair and its plant managers (e.g., Kevin Friel and Stephanie Ortiz) for the past 5 years, have inaccurately signed and certified the company's Annual Reports or failed to submit certifications. These false or missing certifications constitute violations of the CWA and the NPDES Permit. Each instance of Pentair failing to submit a complete or correct Annual Report, and every time Pentair or its agent inaccurately purported to comply with NPDES Permit requirements, subjects Pentair to penalties under the CWA. *See* NPDES Permit, Sections A(9)(d), B(14), C(9), and C(10).

IV. Conclusion

Pursuant to the CWA, PPC intends to pursue civil penalties against Pentair for the violations described above, an injunction against Pentair to cease continuing violations, and recovery from Pentair of attorneys' and experts' fees and costs associated with this enforcement action. *See* 33 U.S.C. § 1319(d) (civil penalties); 40 C.F.R. §19.4 (adjustment of civil monetary penalties for inflation); 33 U.S.C. §1365(a) (injunctive relief); and 33 U.S.C. § 1365(d) (recovery of attorney fees and expert fees). Each separate violation of the CWA occurring during the period commencing five years prior to the date of the notice of intent to file suit subjects the violator to a penalty. The CWA authorizes civil penalties of up to $37,500 per day per violation for CWA violations after January 12, 2009.

At the end of the 60-day notice period, PPC intends to file a citizen suit under the CWA against Pentair and its agents. PPC is willing to discuss effective remedies for the violations noted in this letter prior to filing suit. However, PPC does not intend to delay filing a complaint in federal court and therefore requests that Pentair contact us promptly if it wishes to engage in discussions in the absence of litigation.

Please direct all communication related to this matter to James Birkelund, attorney for PPC, at:

James Birkelund
548 Market St., #11200
San Francisco, CA 94104
T: 415-602-6223; F: 415-789-4556
Email: jbirkelund@greenfirelaw.com

Sincerely,

_____
James M. Birkelund
Attorneys for Earth Island Institute

Cc via U.S. Mail:

Federal Entities

Eric H. Holder, Jr.
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

State Entities

Thomas Howard
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Bruce H. Wolfe
Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Counsel (via email)

Gary A. Davis
Davis & Whitlock, P.C.
Attorneys at Law
21 Battery Park Avenue, Suite 206
Asheville, NC 28801

Rachel S. Doughty
Greenfire Law
Attorney at Law
1202 Oregon Street
Berkeley, CA, 94702

EXHIBIT A

Exceedances of EPA Benchmarks
Storm Water Discharges

Date	Parameter	Sample Location	U.S. EPA Benchmark (mg/L)	Facility Concentration in Discharge (mg/L)
11.8.12	Al	2501 Loading Dock	0.75	4.770
11.8.12	Fe	2501 Loading Dock	1.0	2.790
11.8.12	Cu	2501 Loading Dock	0.0363*	0.0714
11.8.12	Zn	2501 Loading Dock	0.117*	1.690
10.22.12	Al	2501 Loading Dock	0.75	0.952
10.22.12	Fe	2501 Loading Dock	1.0	1.110
10.22.12	Cu	2501 Loading Dock	0.0038-0.0332*	0.0283
10.22.12	Zn	2501 Loading Dock	0.117*	.296
11.11.11	Al	2501 Loading Dock	0.75	1.670
11.11.11	Fe	2501 Loading Dock	1.0	2.060
11.11.11	Cu	2501 Loading Dock	0.0038-0.0332*	0.0363
11.11.11	Zn	2501 Loading Dock	0.117*	Not reported
11.11.11	TSS	2501 Loading Dock	100	590
10.03.11	Al	2501 Loading Dock	0.75	11.900
10.03.11	Fe	2501 Loading Dock	1.0	16.100
10.03.11	Cu	2501 Loading Dock	0.0636*	0.678
10.03.11	Zn	2501 Loading Dock	0.117*	16.600
02.23.11	Al	2501 Loading Dock	0.75	3.800
02.23.11	Fe	2501 Loading Dock	1.0	5.380
02.23.11	Cu	2501 Loading Dock	0.0636*	0.103
02.23.11	Zn	2501 Loading Dock	0.117*	1.540
01.11.11	Al	2501 Loading Dock	0.75	2.780
01.11.11	Fe	2501 Loading Dock	1.0	3.440
01.11.11	Cu	2501 Loading Dock	0.0636*	0.092
01.11.11	Zn	2501 Loading Dock	0.117*	1.890
05.19.10	Al	2501 Loading Dock	0.75	1.490
05.19.10	Fe	2501 Loading Dock	1.0	1.790
05.19.10	Cu	2501 Loading Dock	0.0636*	0.103
05.19.10	Zn	2501 Loading Dock	0.117*	4.030
05.19.10	TOC	2501 Loading Dock	110	117
05.19.10	Specific Conductivity	2501 Loading Dock	200 umhos/cm (proposed)	926 umhos/cm
10.13.09	Al	2501 Loading Dock	0.75	9.14
10.13.09	Fe	2501 Loading Dock	1.0	11.8
10.13.09	Cu	2501 Loading Dock	0.0636*	0.249
10.13.09	Zn	2501 Loading Dock	0.117*	6.44
10.13.09	Pb	2501 Loading Dock	0.0861	0.981

Date	Parameter	Sample Location	U.S. EPA Benchmark (mg/L)	Facility Concentration in Discharge (mg/L)
10.13.09	Specific Conductivity	2501 Loading Dock	200 umhos/cm (proposed)	405 umhos/cm
10.13.09	pH	2501 Loading Dock	6.0-9.0 s.u.	6.12 s.u.
10.13.09	TSS	2501 Loading Dock	100	214
10.13.09	TOC	2501 Loading Dock	110	141
05.01.09	Al	2501 Loading Dock	0.75	1.490
05.01.09	Fe	2501 Loading Dock	1.0	1.790
05.01.09	Cu	2501 Loading Dock	0.0636*	0.103
05.01.09	Zn	2501 Loading Dock	0.117*	4.030
05.01.09	TOC	2501 Loading Dock	110	117
05.01.09	Specific Conductivity	2501 Loading Dock	200 umhos/cm (proposed)	926 umhos/cm
04.07.09	Al	2501 Loading Dock	0.75	1.450
04.07.09	Fe	2501 Loading Dock	1.0	1.580
04.07.09	Cu	2501 Loading Dock	0.0636*	0.0968
04.07.09	Zn	2501 Loading Dock	0.117*	4.260
04.07.09	TOC	2501 Loading Dock	110	119
04.07.09	Specific Conductivity	2501 Loading Dock	200 umhos/cm (proposed)	284 umhos/cm
04.07.09	pH	2501 Loading Dock	6.0-9.0 s.u.	5.62 s.u.

* hardness dependent range of benchmark values